

# TRANSCRIPT

## LAW REFORM, ROAD AND COMMUNITY SAFETY COMMITTEE

### Inquiry into drug law reform

Melbourne — 18 September 2017

#### Members

Mr Geoff Howard — Chair

Mr Bill Tilley — Deputy Chair

Mr Martin Dixon

Mr Mark Gepp

Ms Fiona Patten

Ms Natalie Suleyman

Mr Murray Thompson

#### Witnesses

Magistrate Jennifer Bowles, 2014 Churchill Fellow; and

Mr Frank Dixon, Chair, *What Can Be Done* Steering Committee.

**Necessary corrections to be notified to  
executive officer of committee**

**The CHAIR** — We will continue on with this hearing of the Law Reform, Road and Community Safety Committee. We are hearing now from the *What Can Be Done* Steering Committee. Magistrate Jennifer Bowles will be presenting to us, and with her is chair of the group, Frank Dixon. Welcome to you both. As you will be aware, Hansard is recording our conversation this afternoon. After a couple of weeks you will get a transcript of what we have discussed so that you can check that it is technically correct, and then it will go on the public record. I think they are the key things I needed to remind you of, Jennifer. We have received both the information you sent before today as well as the extensive information that you provided to us today. We will allow you to lead us through that, and then we will follow up with some questions.

**Magistrate BOWLES** — Thank you very much for the opportunity to present today. I would like to commence by acknowledging the traditional owners of the land on which we are fortunate enough to meet, the people of the Kulin nations. I pay my respects to elders past and present and also to the young people of today, who we obviously hope are going to be leaders in their community.

I am speaking today in my capacity as a 2014 Churchill Fellow. Even though I am a magistrate of 19 years — as it will be next month, half of which have been spent on the Children’s Court bench — I am speaking in my Churchill Fellowship capacity. You have referred to the detailed envelope of materials, so perhaps I will just summarise what they are. There is a PowerPoint presentation, an overview of the Churchill Fellowship report, a copy of the submission that was submitted to this parliamentary inquiry and a graph that indicates the young people in custody and issues related to their alcohol and drug use, which they have indicated relates to their criminal offending. A high percentage have been victims of abuse, trauma and neglect, have had child protection involvement and also have mental health issues.

There is also a document which summarises the emergency care search warrants which are issued by the Children’s Court. These are for children who are in the child protection system. The current Children’s Court annual report has not been tabled so I have only been able to include the statistics up until 2014–15, but you will see there has been a rapid increase and I think that increase has continued. These are children missing from care; no-one knows where they are. They are meant to be in a unit or at a home, and they are not there. I have also summarised the human rights implications of my recommendations, and then there is a chart that describes the stage in the Children’s Court I envisage that the orders I have proposed could be made. Finally, there is a copy of my Churchill Fellowship report.

I guess I would commence by saying, as I have indicated, that I have been in the Children’s Court for more than half of the time I have been on the bench. In the Children’s Court we deal with children committing criminal offences between the ages of 10 and 17, and we deal with children in child protection from when they are babies all the way through until they are 18. What will not surprise you is the number of young people who are dependent on illicit substances and alcohol and the link of those substances to their criminal offending.

The reason I applied for the Churchill Fellowship was that I just became incredibly disappointed, to say the least, to watch the lack of hope in a lot of the young people’s eyes who come before me. They would often readily admit that they have got a drug and alcohol issue, and I saw it as a key opportunity to intervene whilst they were children to do something about their dependency issues. The problem is that whilst we have some very good voluntary residential services and detox services, they are limited and they require the young people to be prepared to go there.

In my report I talk about a young boy of 17 who wrote this poem to me whilst he was in custody. He was not a child in the child protection area; he was a child who had a mother who came to court with him for each and every court appearance. The reason he was coming before the criminal division was because he was stealing bottles of vanilla essence from a supermarket, and the reason he stole the vanilla essence was that — and I did not realise it — the alcohol content is very, very high. He had had a number of psychiatric admissions, with the beginnings of schizophrenia, and he was stealing the vanilla essence. Normally you would not expect a young person who is stealing a couple of dollars worth of vanilla essence to end up in custody, but he did because he kept doing it. Then his offending spiralled to the point where when his mum would not provide him money for cannabis, he assaulted her. Ultimately intervention orders were applied for by the police, and he became homeless.

I was sitting there watching his life just spiralling out of control, and it seemed to me that his issues were a health and welfare issue and not essentially a criminal justice issue. He wrote this poem. I will not read all of the poem, but I will read the last couple of verses, where he said:

I pray for a Saviour to help me conquer my compulsive behaviour  
Which keeps leading me into trouble and life-threatening danger  
I feel weighed down and burdened with responsibility  
Having to work on getting better and back to normality.

It seems like it's all too much, after years of such fuss  
I'm prepared to give up and declare that I've had enough  
If I am to die, please keep in mind that I did try  
Tears come to my eyes, at times I've contemplated suicide.

He had literary skills that most of the young people appearing before us do not have, but I think he encapsulates that feeling of isolation. In his case, he would attend residential detox facilities, but he could only last a few hours because of his dependency and he was out again, using and back in court. There was just this revolving door. I thought there must be a better way when we have got young people who, for whatever reason, cannot or will not try and engage in treatment. We expect them, often without parents, to attend a clinician and talk about their drug and alcohol issues, but that is at most usually an hour a week if they are not in a residential facility. Given the high numbers of young people who have got trauma and abuse as part of their background, it is not surprising they are self-medicating. To think an hour a week with a clinician is going to solve their problems, I just think does not make sense. Whilst there are services that some young people engage in, in my view there is a gap, and for the vast majority of the young people who have started using often at 12 — 10 and 12 is what I see — I think we have an obligation to provide a service to them that they will have the opportunity to engage in.

I applied for the Churchill Fellowship because I wanted to see what countries overseas were doing to see if there was anything that we could learn from the countries' experiences overseas, and I travelled to Sweden, England, Scotland and New Zealand. As a result of what I observed in those countries, particularly as a result of speaking to the expert clinicians who had worked in this area for many years, be they psychiatrists, doctors or nurses, and — most importantly — the children, I formed a view that we could do better if the Children's Court had an additional order that it could make. I am not sure whether you have had a chance to read the report, but perhaps I will just step through some of the things that we were told overseas and then just talk briefly about the model.

I did not expect that we would have a chance to speak to the children in a lot of the facilities overseas because I thought, one, they might not want to speak to me but, secondly, there are all those kinds of ethical issues. But at every facility we visited there was at least one or two and sometimes more children who wanted to speak to us about their experiences. I visited facilities that included inpatient involuntary psychiatric wards in hospitals, which were incredibly depressing, then secure facilities in Sweden, England and Scotland, to residential services like we have here, to outreach services. I went across this whole spectrum to see what are the essential features of those services and how effective I thought they could be here back home.

The main thing I wanted to know was if the court had the power to mandate treatment, to require a young person who has a substance abuse issue who has not accessed the voluntary services to remain in secure, contained, albeit therapeutic, facilities — I am not talking about a prison — could that make a difference? Would it give them an opportunity to have some time out from their chaotic lives where they spend most of their time worrying about using substances and meeting up with their negative peers — not at school. If the court had the power to effectively take control and say, 'We need you to go into this facility', and then, as my model indicates, a step-down facility, could that make a difference? Overwhelmingly what I heard from the experts overseas and even from some of the kids themselves was that, yes, it can make a difference. Mandated treatment can be as effective as voluntary treatment. For example, in the report I refer to a couple of quotes from the young people. This is from a boy who was in a secure facility in Sweden:

I didn't want to come here. But I couldn't do it on my own. I'm really scared to think of what could have happened if I hadn't come here ... I could have died.

Another young person who was in New Zealand said:

We're just kids — you guys are the adults. We're teenagers, we're rebellious, we don't like to admit it. You're wiser and isn't it up to you to know what's best for us?

One of the alcohol clinicians in Sweden said that:

Absolutely ... sometimes they require a closed facility because nothing else is working (e.g. one boy who is drunk every day and refuses assistance).

I get reports every day and there are kids who are told to go and have an alcohol and drug assessment and then engage in treatment, and time after time I will see that they might go for the initial assessment but they will not continue to engage. One of the judges in New Zealand who runs their youth drug court said:

There's certainly, in my view, a place for compulsion. I can always lock people away, but I can't always put them in rehab.

One of the very experienced clinicians in New Zealand said:

There is not really any difference between those who volunteer and those who are here as part of a court order in terms of how effectively people engage in treatment.

What I did was cherry-pick what I thought were the best features of what I saw overseas, and so the model that I am recommending does not replicate exactly what I saw in any one country. It pulls together what I think are the best features. The model involves a young person appearing before the Children's Court, whether it be in the child protection side of the court or the criminal division. Unfortunately a lot of the children in custody — 60 per cent — have a child protection background, so we are dealing with the same child. The Children's Court would receive an assessment report confirming that the young person requires intensive support to address their issues. They would have had the opportunity to engage in the voluntary treatment regime, and for whatever reason they either have not attended or that has not worked. The court would determine that a youth therapeutic order should be made, and that order would place the young person in a secure therapeutic community facility in order initially to detoxify if necessary and then to commence treatment. By treatment I am not talking about the kind of mental health electroconvulsive shock therapy; I am talking about the cognitive behaviour change programs and the other psychological interventions of counselling. Importantly, there have to be expertly qualified and committed staff, and there would be individual counselling and group counselling.

There would be judicial oversight regarding the progress of the young person in treatment. The need for judicial oversight is absolutely essential. We do not want to re-institutionalise these kids, and there needs to be external oversight. I suggest in my report that it not be limited to the court but there could be the commissioner for children and young people or perhaps an agency like the one I saw in Scotland, the Mental Welfare Commission. The court would be provided with regular progress reports as to how the young person was progressing in treatment.

One of the distinguishing features of the system I am recommending compared to those that I saw overseas was that in the criminal division it would not be a sentence. When young people are sentenced, they are effectively counting down the days until they get out. This would be an order which would be made whether they be on bail or whether they have pleaded guilty and they are awaiting sentence. This is a rehabilitative option for them. They would have the opportunity to engage in treatment, and the court could then place greater reliance on the rehabilitation prospects because of the extent of their involvement in treatment.

Most importantly, all of the facilities which were residential that I observed overseas had a school and training facilities on-site, and I did not expect that. I thought there would be counselling services. But this is an opportunity to holistically deal with what are the reasons why these young people are using. It is like peeling an onion. Until you get to the kernel of why they are using, they are never, ever going to be able to deal with the trauma and abuse and be able to try to shift and move on. This is an opportunity to hopefully set them up by holistically dealing with, as I have said, their issues.

So there would be a closed, secure facility initially which they would attend. I cannot emphasise enough that it is not a prison. I saw facilities in Sweden, in England and in Scotland that are closed, and there are photographs in the report that show what I am talking about when I am talking about homely, albeit secure. They would step down preferably to a facility on-site which would be similar to the current residential services we have — for example, like Birribi — and in my model the same clinicians would continue to work with the young person in the secure facility and then in the step-down facility on-site. A lot of these young people, as I am sure you know, have got major issues with trust, and if they are able to build up a therapeutic relationship with the clinicians, then that is what we want to be able to continue. Ultimately the aim would be for them to then re-enter the community in a further step-down facility like a house or houses which would have more of a skeleton staff, but again hoping that that same therapeutic relationship could continue.

What I was told overseas is that unless you spend the equivalent money on them re-entering the community, often it will not work. There needs to be that staged transition, that planned transition, with as much work as possible done whilst they are in the therapeutic facility. Ultimately the court would have regard to the progress

of the young person, as I said, in terms of an appropriate sentence for whatever the criminal offending may have been or, in the case if they are in child protection, whether or not they may, because they have dealt with their substance abuse, perhaps go into a lead tenant situation and not have to remain in a residential unit or may even be able to return home.

In addition to the need for external oversight, I have of course considered the human rights implications for young people, and in my report I refer to the United Nations Convention on the Rights of the Child, at page 71, and the Charter of Human Rights and Responsibilities Act that we have here in Victoria. I guess what I would really like to point out to the committee is: article 6, 'Children have the right to live a full life. Governments should ensure that children survive and develop healthily'; article 33, 'Governments should provide ways of protecting children from dangerous drugs' — which is obviously most relevant here; and article 36, 'Children should be protected from any activities that could harm their development'.

Children who are using ice are 11 times more likely to have psychotic episodes throughout their life. I have got boys as young as 14 who have got damaged livers because of their alcohol abuse. We need to intervene at this early stage because the trajectory for a lot of these young people is to prison. And if we want to reduce crime, if we want the community to feel safe, if we want to have fewer victims, we need to deal with a lot of these young people who, as the statistics indicate, link their criminal offending and their substance abuse all in one. The charter of human rights refers to:

A child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation'.

Perhaps that is an overview — I have not gone too long — as to why I have got to the point that I have in terms of suggesting as a Churchill Fellow that there needs to be legislative change and there needs to be an additional option for the Children's Court in terms of sentencing and child protection.

**The CHAIR** — Thank you, Jennifer. You certainly did whip through that very quickly, but that does leave us with plenty of opportunities for questions then. Can I start by asking: in terms of the current options before somebody in the Family Court who is dealing with a young offender, what are the current options you have? In terms of if they are sentenced to a period in a youth detention centre, what happens in a youth detention centre that cannot incorporate this or does not at the moment?

**Magistrate BOWLES** — In terms of the current sentencing options, there are a number of orders we can make for young people to be in the community, and those orders can include conditions requiring the young person to engage in drug and alcohol treatment and counselling. Ultimately the last step along the way is for them to be sentenced to a period of detention. So there are a number of orders that we have: youth supervision order, youth attendance order, probation order — all of those orders provide for such conditions. It is just very difficult. If a young person is sentenced, for example, to a probation order — so the court has determined that, in the scale, that is where the young person falls, which is just above a fine, to give you an idea, so there is probation, youth supervision order then youth attendance then detention — if they do not engage in treatment, what do we do? We go up the sentencing scale or we lock them up. If we have determined that their criminal offending warrants a sentence in the community, most of us are not going to want to lock them up.

In terms of your question regarding detention, yes, there are some facilities in detention. I am not familiar enough with how detailed they are in terms of drug and alcohol because we seem to get mixed messages. But certainly there are difficulties if they are on remand. If they are sentenced, I think there are some options in a custodial environment, but what one of the leading psychiatrists who I spoke to in England said was that you do not promote rehabilitation in a draconian environment. A prison or a detention centre is there for a reason. It is there because ultimately it has been determined by the court that the offending is so serious or is so prevalent that it requires detention. There is a need for punishment in our sentencing regime.

These young people — to deal with the reasons why they are using — are not there to be punished. They are there to try to understand what is the reason for why they are using. You can imagine the difference in being surrounded by a huge wall, youth justice security officers walking around, locked down at a certain time. It is very minimal in terms of how sparsely furnished the rooms are. They are there for a reason. If you contrast that with the type of environment that I am talking about, which is a therapeutic environment, one of the best examples was Glebe House, where the young people were even involved in a democratic way of choosing the CEO and interviewing the CEO. They got life skills in terms of cooking. All of those things that are part and

parcel of a therapeutic community, that is not what you see in a prison or in a detention centre. So to promote rehabilitation is the short answer. I do not believe the optimal environment is a detention service, albeit that we try very hard for the young people in detention to be rehabilitated.

**The CHAIR** — And this could happen at an earlier step, of course.

**Magistrate BOWLES** — That is right; yes.

**Mr F. DIXON** — And that question of ‘can it be dealt with in the detention scheme?’ is dealt with in more detail on page 39 — for future reference.

**The CHAIR** — Of which report?

**Mr F. DIXON** — Of Magistrate Bowles’s fellowship report.

**Magistrate BOWLES** — There is one other thing I have not mentioned. On page 43 of the report I list what are the essential elements in order for there to be the optimal opportunity for rehabilitation to take effect: committed and high quality staff; detailed assessment; the location of the facilities and the nature of the buildings on-site, both secure and open; that there be a therapeutic community model, which I have just touched on; the step-down facility; support for the young person when they leave; democratic principles; culture significant for a lot of our Aboriginal young people; education; professional development and support for the staff; and external scrutiny. I think I touched on a number of those. They are absolutely key critical features, and if any of those are missing, then there would be real concern as to whether or not we are doing the best that we possibly could to try to ensure rehabilitation.

I am not pretending this is going to work for every young person — I am not that naive. But if you came to the Children’s Court, you would see the lack of hope that a lot of these young people have when I say, ‘Now, Johnny, you know you need to go and see your drug and alcohol counsellor, and there is going to be a report provided’. They just look at me, put their hoodie on and kind of slink out of court. I think with all the stability I had in my life, if I was 13, 14, 15, would I be getting on a tram and saying to my mates, ‘I’m just going off to see my drug and alcohol counsellor’? We are expecting these young people to make rational choices about long-term health implications when they are using every day and they are with negative peers. Even for someone in my position, I would not have engaged in the kind of difficult treatment that is involved, but in a safe and secure environment and a supportive environment, which is what I am recommending, I think that is where we have got the optimal opportunity to intervene and to intervene at a young age.

**Mr TILLEY** — Your Honour, I just want to thrash it out a bit. As it is today, I represent an area on the border of New South Wales and Victoria, and I am very familiar with the Children’s Court jurisdiction. A number of young people appear before our district courts. As it is today, for example, just for adult mental health we need yesterday or years ago \$20 million for mental health facilities on the border straightaway. Through talking about a sentencing option, I suggest what you are saying, Your Honour, is of fantastic merit. Particularly in the case of breaching or failure to complete, what happens off the back of that, do you think?

**Magistrate BOWLES** — If this order was available? Is that what you are suggesting?

**Mr TILLEY** — Yes, if an individual is failing somewhere.

**Magistrate BOWLES** — Well, importantly they would not be penalised, so they would not receive a higher sentence. This is a rehabilitation option. So how I perceive it is that it is regarded as an opportunity. If the young people do well, they get all of those ticks and the merit and we place greater weight on rehabilitation. If for whatever reason it does not work out, then they do not get further penalised; they are sentenced as they would be at the moment. They have a drug and alcohol issue that is not currently being addressed. And I should say that assessment is critical because in a therapeutic environment we rely upon the clinicians to make sure that, whether the unit is for gender-specific or certain age categories, there has to be a way in which it will work. So we cannot have kids going in there that are just going to smash the place up. The assessment is really critical. I cannot overemphasise that; that is really important.

**Mr TILLEY** — As you say, it is an option. It is another option.

**Magistrate BOWLES** — That is right; a suite of options, yes.

**Mr TILLEY** — Once again, regardless of the findings, governments are faced with the challenges of how much is in Treasury and managing the taxpayer. Just off the back of looking at some the figures of your experience, in your report from Sweden, in the order of about 250 staff maintain three facilities for 97 males — and you do some rough figures around that. Say, if you are throwing a dart at a dartboard, just in guesstimates, it is something in the order of \$25 million annually without any infrastructure. I am only throwing that out for discussion. Do you have any idea on the modelling? Obviously what can be done in the steering committee is very helpful with recommendations and governments to get these policies up. Do you have any idea on the funding model for this option to work?

**Magistrate BOWLES** — We have got a couple of the big accounting firms who are looking at it at the moment, and so probably I prefer not to say anything because I think it might be uninformed. It was difficult to do costings because every country has different wage rates and pay structures, in terms of knowing if we would be looking at a current property being renovated or one having to be purpose-built, so there are a lot of cost factors. I guess what I would say in relation to when you talk about Treasury, and I know it is difficult in political electoral cycles, but you have to look at the cost of not intervening, and that is my point. A lot of these young people are incredibly damaged, but they are not beyond rehabilitation at this stage.

And my concern is when you look at the Sentencing Advisory Council report of last year, it says if we have got children starting to appear before our court at age 12, for example, the trajectory for them to go to adult prison — I cannot recall the exact statistic — is something like 85 per cent. It is huge. We all know how much it costs to have people in prison, financially speaking, but it is not only about that individual's quality of life; as I touched on before, it is the victims who are going to go along the trajectory for the rest of their lives. And how do you measure that?

I think, yes, there will be a cost up-front, but the cost of not intervening I think ultimately is a lot more. If you are going to have these young people 11 times more likely to have psychiatric admissions, these people are non-productive members of our community. So the young boy who wrote that poem, who is now out of our jurisdiction, his mother has got in contact with me since he left the jurisdiction. He has just spent six months as an involuntary patient in a psychiatric ward. That is incredibly sad. He is a young man, and that is his life. I have got families, and some of them are in very affluent suburbs. One family I know, the parents have both given up work. They spend their life running around after their son trying to find him; they do not know where he is. What cost do you put on that?

When I came back — I am obviously not a clinician — I wrote the report. Then what happened was — I organised for more than 50 people to attend a forum in October 2015, because I wanted to see whether it had merit from clinicians because I am not a clinician. First of all, it was overwhelmingly endorsed and the recommendation was for a steering committee to be established, and that is how we established the steering committee. On the steering committee we have the CEOs of YSAS, Odyssey House and Windana; we have physicians from St Vincent's Hospital, who administer the Severe Substance Dependence Act; we have a clinical psychologist; we have lawyers — so we have people across the board — and we have the Centre for Excellence which is the umbrella organisation for all of the not-for-profits in this space. They are all supportive of this recommendation. So I think that is important to understand. It is not just my little voice out in the wilderness; it is actually a very senior steering committee that has been prepared to attend our meetings every six weeks to try to promote and get some legislative change.

**Mr TILLEY** — I hear you loud and clear. We have got peer pressures from our youth. You have got whole neighbourhoods where they get swallowed by their neighbourhood and they turn up in places that the public will go, up to all kinds of mischief. No doubt you see our youth as early as the age of 12.

**Magistrate BOWLES** — It is incredibly sad.

**Mr TILLEY** — And it is; I appreciate that.

**Mr M. DIXON** — Just a comment first. The education component, I think, is just so important, coming from that education background. It does wonders if you actually have got that opportunity as they are settling down and being helped to then re-engage with education.

**Magistrate BOWLES** — To get some self-esteem back, actually feel important.

**Mr M. DIXON** — Yes, and education does that in so many ways.

**Magistrate BOWLES** — That is what one of the teachers in Sweden said. It is not so much about what they are learning; it is about the feeling that they can achieve.

**Mr M. DIXON** — Yes, it is almost a normal thing to do, so they get re-engaged. Just with the steering committee, it has been going for a while. You are basically lobbying, aren't you, in crass terms?

**Magistrate BOWLES** — Yes. That is why I am speaking as a Churchill Fellow and not as a magistrate, and it is not my usual role. Yes, effectively that is right. So we have got people from those areas. Frank chairs the steering committee. Did you want to say anything more about the steering committee?

**Mr F. DIXON** — I know you have got a lot of documents, but on page 2 of the actual submission, the first paragraph you see there is the membership of the steering committee. I think the powerful thing about this is that if Magistrate Bowles had come back with this great idea and a lone voice, then it may have caused us to re-evaluate, but this is something that everyone is saying is a major gap. I think it is really powerful when the CEOs of organisations that provide voluntary services, both residential and outreach and so on, are saying, 'We can't meet this need. We know there are young people that are not accessing our services, and we need to do something about this'. They really are a lobbying source. They have been sources for, I guess, confirming that what we think should happen is what should happen.

**Magistrate BOWLES** — And they have refined the model. That was the CEO from Odyssey and YSAS who prepared that model.

**Mr M. DIXON** — Just my last question: being in New Zealand, this is just par for the course; it is part of the youth justice system now, is it? Or is it trialling or just in sections?

**Magistrate BOWLES** — New Zealand does not have secure therapeutic centres. So in relation to sentencing options, it is more akin to our residential services that we have here. It was the judge in the Drug Court who said, 'I've got the power to lock people up but not send the young people for treatment'. But we did visit a child protection facility, which is a secure facility, and there were some positives in what we saw there. So, yes, not in the criminal side at this stage.

**Ms SULEYMAN** — Thank you very much for your submission. I have got a couple of questions. One is: you are, I think, on 19 years, you said.

**Magistrate BOWLES** — Next month it is 19.

**Ms SULEYMAN** — You have seen so much in your 19 years. What was the real turning point for you to get to explore other alternatives?

**Magistrate BOWLES** — It was the young boy who wrote the poem and his mother saying to me one day in court, 'What can you do? I am watching my son die before my eyes'. That was when I just thought, 'Enough. I have to do something'.

**Ms SULEYMAN** — My second question is — and you have made reference and I think my colleague has made reference to how education is absolutely critical, and that sense of belonging and that confidence, so your report really talks about those that are in the system, children that are in the system — can I seek your view or opinion in relation to those that perhaps have not yet entered the system, are not offending but are on drugs of some sort?

**Magistrate BOWLES** — Look, I get asked that quite a few times, because parents are not wanting their children to be in the system and yet they have got this issue. I limited it to the Children's Court because I thought it was really important to have court oversight. Ultimately it would be a matter for the government of the day as to whether or not it was of the view that it should be extended beyond young people appearing before the court. In my view the model would work for them as well, absolutely. It is just a case of what oversight there has to be. I think that is one of the challenges.

Whilst there is a court involved there is some oversight — and I think I mentioned there needs to be other external oversight in addition to the court — but for children who are out there or young people who are not



before the courts at the moment it is difficult because I do not have the power to make any orders or directions; and if you are talking about young people being in a secure facility, I think most people in the community would want to make sure that there was real external oversight if you are doing that. That could be achieved, but it would be beyond what I have mentioned in this report.

**Ms SULEYMAN** — My final question is in relation to — I just have to put it into context — those children that are in the secure, let us say, what you have proposed and the ones that are not, that are experimenting, and I think you have just touched on it. Your proposal can work is what you are saying, but at the moment in your opinion are there gaps in relation to some of the services that are being provided for children and their families?

**Magistrate BOWLES** — There are. When I wrote the report there were only 33 detox beds for young people in the whole of Victoria. There are very few residential programs for young people. There is a lot of emphasis, for whatever reason, on adults and adult services, and I am not sure if that is because adults are more effective at lobbying for themselves than children, but there is a real lack of provision of services. If you speak to any of the service providers, they will say, ‘We are desperate to have more beds, more funding, in order to try to provide services for young people’. So yes, there are current gaps in the voluntary sector, and obviously with what I am talking about at the moment there is not any equivalent service to what I am recommending.

I should say there is secure welfare. I do not know, does the committee know about secure welfare? So in the child protection system we have a house in Ascot Vale that has 10 beds for boys and a house in Maribyrnong that has 10 beds for girls. The court has the power, if there is an immediate substantial risk of harm to the young person who is appearing before us — so this is only in child protection — to make an order for the young person to stay at either Maribyrnong or Ascot Vale. The court can only make an order for up to 21 days initially, and there is a possibility for a further 21 days, but ordinarily it is often a seven-day, five-day time period.

The issue about that is that, yes, it is secure — they cannot leave — but what happens in that time it gives an opportunity for them to have some time out from the community and for assessments to be conducted, medical assessments, psychiatric assessments. But then the model expects that when they leave that secure facility they will engage with whatever referrals have been made. That is where it just breaks down again, because of these young people’s lives. It is hard for me to describe to you how chaotic their lives are. They are incredibly chaotic.

**Ms SULEYMAN** — And I imagine that without having that family support or unit it can get challenging.

**Magistrate BOWLES** — A lot have not. But even with family support, for some of them it is really challenging. So I think there is a tendency to think that these are all young people in child protection who are going nowhere — and yes, there is an over-representation, which will not surprise you, of children on the child protection side — but there are also a lot of families that supposedly do not know what has happened, but something has happened, and their child is currently, from their perspective, ‘out of control’.

**Ms SULEYMAN** — Just one final question: we heard from the Victorian Multicultural Commission earlier on, and they made a submission. Their submission was about, you know, a lot of the non-English-speaking background and new migrant families struggling to understand the system as well. Do you see that as a major issue with the children and their families, or just the children?

**Magistrate BOWLES** — Yes. Certainly in the Aboriginal communities, so not newly arrived migrants, but the over-representation of young Aboriginal people in custody and particularly, in a number of regional areas, their dependency on crystal methamphetamine from very young ages, which is terrible. On the support that I have received from the Children’s Commissioner for Aboriginal affairs, Andrew Jackomos has asked for this model to be implemented as a pilot for young Aboriginal children.

In terms of recently arrived migrant groups, it really varies, but a lot of them, like we know, have experienced major dislocation in terms of getting here and have been exposed to the most horrific experiences, taking years sometimes through refugee camps to get here. Some of them are using. Some of them are committing very violent crimes.

So it is I think culture. As I have mentioned, culture is one of the essential elements. Culture can have a major role in reconnecting young people to their communities and in engaging the elders, whether it be in a recently

arrived community or whether it be in the Aboriginal and Torres Strait Islander community. So yes, I think there is a role and I think culture can be really important.

From the Aboriginal community perspective, I should not speak on behalf of the whole Aboriginal community, but the people who have spoken to me in support of the model have wanted an Aboriginal-specific therapeutic community, so that is how they would envisage helping their young people the most, rather than having Aboriginal young people with other non-Aboriginal children.

I could not say as to other recently arrived groups what their view would be, but I would probably guess it would be very similar to the Aboriginal community.

**Ms SULEYMAN** — Just with most of the kids that do offend, do you find that they are mostly using drugs? The majority are?

**Magistrate BOWLES** — Yes, the vast majority.

**Ms SULEYMAN** — What is the youngest child that you have seen who has been on drugs?

**Magistrate BOWLES** — Ten in the criminal division, and we start at 10. Not a lot. Certainly in terms of the young people that I have seen, I had two young people before me last Friday who are really in a lot of trouble in terms of their substance abuse and their criminal offending. Both nominated 12 as when they had started using cannabis and drinking alcohol, and they are now really entrenched in terms of their ice use, MDMA and really whatever they can get their hands on, and it is incredibly sad.

**Mr GEPP** — Thanks, Your Honour. I am really interested in the scale of offending that you referred to earlier and a comment that you made that many of your colleagues are saying, ‘Well, I’ve really got a choice. I either lock the child up or I don’t’, if they are at a particular point on the scale where they would not normally attract some form of detention. Does this alter that situation so that, even though it is in a completely different environment in terms of the youth therapeutic environment, there is the capacity — I guess this is my question — for some kids who may well come before you that might otherwise walk out the door but they will be detained?

**Magistrate BOWLES** — Well, my view is: why would we wait until it escalates to the point that it has to be detention? So we have got young people on probation orders who could well benefit from the youth therapeutic order. So yes is the answer to your question. I would not be waiting for them to be in detention, although there will be a number in detention who have reached that point that hopefully they want to do something about their substance abuse and have not been able to.

**Mr GEPP** — I think this is a fabulous idea. I am just trying to think about some of the objections that may well come around it. Say the child is in that circumstance: they come before you, normally they would walk out the door, but you say, ‘I’m going to send you through this path’. From a legal perspective what is the capacity then for their representation to challenge that decision of the court, knowing full well that otherwise that child might have walked? And I do not know the answer to the question, so I am not trying to —

**Magistrate BOWLES** — I think it is important to bear in mind that if, for example, the young person had committed a number of serious matters but was still potentially looking at probation, our Act requires us to start at the bottom of the sentencing scale and work up, as it does in the adult jurisdiction, and when you look at our sentencing considerations in section 362, it is very much about keeping young people in the community wherever possible. So there is some offending that is very, very serious which, if it continues, would lead to detention, but perhaps if it is a young person who is down the younger end of the scale and does not have a prior criminal history, we might be thinking of probation.

What I would be saying to their lawyer is, ‘Look, Johnny clearly has a serious substance abuse issue. What is he going to do about it?’. I would expect a competent counsel to say, ‘Well, Your Honour, we’ve organised an appointment for him to attend at YSAS or one of the agencies. He’s going to detox’. I am hoping that this order would actually be used as a way in which to try to encourage young people to engage voluntarily, but where they have had those options, they are still using, they are still offending or they are in the child protection system or we do not know where they are, then I would be saying to their counsel, ‘In order for me to place emphasis on rehabilitation, something has to happen’.

I think overwhelmingly there would be young people looking at detention who would probably benefit most from this — or not benefit most, but the court would probably consider, when you weigh up what you are talking about, that they would say, ‘Rather than locking them up, I prefer to put them in a secure facility’. The boy who wrote the poem, for example, was almost pleading with me, ‘I’ve tried and I just can’t do it’.

**Mr GEPP** — To do something, yes.

**Magistrate BOWLES** — He was not going to get a sentence of detention, and yet I would have been quite prepared to put him in this facility. So, I think it is a bit hard to answer the question, but I hear what you are saying. There will be some lawyers saying, ‘If my client’s going to walk out the door, what do you think you’re doing here?’. I would be saying, ‘Your client has to understand that if he or she continues on this pathway, they are going to be locked up. Do you want to do something about it now, or do you want to wait until they get to that point?’.

**Mr GEPP** — To follow up Mr Tilley’s question, if we get a kid, put them through this program — and I would be interested to hear what has happened overseas — I think the recommendation was for an initial period of six months. Was that right?

**Magistrate BOWLES** — Four to six months. Not in the secure, so that is for the whole program.

**Mr GEPP** — That is right. Secure and then there is the open community living.

**Magistrate BOWLES** — That is right.

**Mr GEPP** — And this would all be done by assessment, I imagine, at some point in that four to six-month period. For children who are assessed as being still at risk, what is the overseas experience for those particular kids? There will be some that, I would imagine, would be raging successes in terms of going through this, as we have heard, but there will be some that just keep running into that brick wall.

**Magistrate BOWLES** — The court would be guided very much by the clinicians’ assessment. In terms of legislation, we would want there to be some discretion built in, but if the clinicians were still recommending, then the court could look at an extension of the order.

In terms of the success rate, what we were told in Sweden, which is the country which has had secure homes for — what was it, Frank? Something like the 1600s or something —

**Mr F. DIXON** — Yes, hundreds of years.

**Magistrate BOWLES** — It is a really, really long period of time. Bearing in mind that their age of criminal responsibility is 15 whereas ours is 10, they very much treat criminal offending as being a welfare issue. In their secure homes they have people in the child protection system and in the criminal division, but there are not very many in the criminal system because there has to be very serious criminal offending for them to be sentenced a secure home. They said one-third of those young people, who are obviously very disaffected and have not been able to live in the community, go on after being in the secure environment to live a productive life. One-third pretty much get their lives on track, but they still might have some infractions with the law, and one-third continue down the path of lawlessness and end up in detention.

**Mr GEPP** — Is part of it an environmental assessment as well? When the child is about to come out of the facility are we assessing what environment they are going into as well?

**Magistrate BOWLES** — The transition is critical. For example, it has got to be planned and it has got to be sorted out. That is right, there has to be an assessment done of whether they are going to be living in this transition house, whether they are going to be independent living, whether they are returning home, because we know for a lot of these young people that, if they go back to the environment that they have been brought up in, the likelihood is they are going to go back to the same old ways. That is why, as Mr Dixon indicated, education and training is so important, because we want to actually holistically look at their lives. We want to change them from hanging around railway stations, in parks, at shopping centres with nothing to do. I will say, ‘Why didn’t you go to school?’, and they will tell me, ‘I slept in’; ‘Why did you sleep in?’ — ‘I didn’t go to bed early enough’; ‘What time did you go to bed?’ — ‘2.00 or 3.00 a.m.’; ‘Well, maybe you should go to bed earlier’ —

‘Oh yeah’. And then they have got their cannabis use, and that is their lives for a lot of them. I am generalising, but that is the trajectory.

We need for them to feel good about themselves, to feel they can achieve, to feel they can be a valuable member of our community. When you feel all of those things, you are less likely to offend, because you feel part of it instead of feeling like you are on the fringes all the time and just looking in. Whereas everybody seems to have cars and holidays and jobs, they look and think, ‘I’m never going to achieve any of those things, so why try?’.

**The CHAIR** — All right. We are running short of time. Have you got any questions, Murray?

**Mr THOMPSON** — Your Honour, thank you for your research and work and your focus on a critical issue affecting many vulnerable families in Victoria. My first question relates to the number of beds proposed under your model for which costings have been done and the percentage or cohort of people who would benefit from such treatment that would be treated under this process. Does your model impact on 3 per cent of the cohort or 5 per cent?

**Magistrate BOWLES** — That is really difficult for me to say. I say that because I sit in one court. There are courts all around the state, and I am not sitting in the criminal division every day. What I can say is that when you look at the statistics from the Youth Parole Board, you will see the percentage of young people in custody who link their offending with their substance abuse in terms of those numbers. As you pointed out, there are a whole lot that are not in detention that have got substance abuse issues. In terms of the beds, the model — what was it, Frank, in terms of —

**Mr F. DIXON** — It was 47.

**Magistrate BOWLES** — Forty-seven beds was the model for one facility. In my ideal I would have a number of these facilities throughout the state.

**Ms PATTEN** — That were smaller than 47?

**Mr F. DIXON** — I am sorry. It is 36 beds with the view that approximately 47 people might access it over a 12-month period.

**Magistrate BOWLES** — But I think we could build a number of these facilities almost overnight, and that is the view of the people on the committee. I cannot answer about the percentages, except to say that I would be very confident that if you had a number of these facilities, they would fill up overnight because that is how desperate the need is.

**Mr THOMPSON** — Thank you. My second question is: the statement by Greg’s mother — ‘What can you do? I’m watching my son die before my eyes’ — is a question that is being presented to me by a family whose son is 25, and they have no options. What would you tell me to tell them?

**Magistrate BOWLES** — My recommendations relate to the jurisdiction of the Children’s Court, but I should say that overseas and what we know is that the brain is still developing until kids are 25 and that ideally this option would be available in the Magistrates’ Court for young people up to the age of 25. I restricted it to the Children’s Court because of the jurisdiction I am in.

In terms of what you can say to that family, ask them to contact me and help me lobby to get this up, basically, because the need is just huge. Part of the problem with the need is that for a lot of families there is a lot of shame associated with it, and they are so exhausted and worried about whether their kids are still alive that their ability to actually get together and try and lobby is really difficult. I empathise. I understand exactly what that family is saying to you. I guess all I could say to you is that in your role you have an opportunity to legislate and to make a difference, and I would hope that perhaps all of the different political parties would get on board and see that there is merit in what I am proposing.

**Mr TILLEY** — Just one very quick one, Your Honour, coming off my colleague Mr Gepp. With the juveniles that appear before you, is it all owing to the presence of a substance or substance abuse?

**Magistrate BOWLES** — Not always.

**Mr TILLEY** — But in connection with their behaviours?

**Magistrate BOWLES** — Very often, yes.

**Mr TILLEY** — Is there any reason why, for example, with the number of trials and things that we have in the state of Victoria that a division of the Children's Court could not be included in the Drug Court to expand on those matters for these sentencing options?

**Magistrate BOWLES** — I have recommended a youth drug court as well.

**Mr TILLEY** — Not as well, but a division of the Children's Court under the existing limited Drug Court.

**Magistrate BOWLES** — Well, the Drug Court model for adults is different to what I am proposing. That has an element where jail has to have been the only option for the adult, and if there are screens that return the presence of illicit substances, they have to do time in custody. It is a very different model from what I am talking about, in my view.

**Magistrate BOWLES** — Was there anything you wanted to say, Frank?

**Mr F. DIXON** — I think you have covered it exceptionally.

**Ms PATTEN** — I actually just wanted to clarify. We were talking 37 beds in a unit. Is that what you think —

**Magistrate BOWLES** — Thirty-six.

**Ms PATTEN** — Or 36 beds. Is that what you think is the optimum size, because I thought some of the other places were smaller?

**Mr F. DIXON** — Yes. I might speak to that briefly. In answer to the question of demand, we did attempt an exercise to say if you looked at all of the people who might qualify across Victoria coming into the court system, we approximated a figure of about 200. Now, practicality says you cannot just provide the 200 like that. But in terms of a scale of what is reasonable to expect might be the overall demand, it is something like that figure. So we are not talking about 2 or 3 per cent of the demand; we are actually talking about a reasonable percentage of the demand even in an initial facility. And the other thing about this, and it was actually —

**Magistrate BOWLES** — But not that you would have 200 in one facility. We are not talking of that.

**Mr F. DIXON** — No, not for a moment. If you build everything you think you would need now —

**The CHAIR** — Two hundred at any one time across the state.

**Ms PATTEN** — Yes, 10 or 20 or something.

**Mr F. DIXON** — That is right. Now, the other thing is that this revised model was prepared by a couple of the people who are CEOs of voluntary residential services now, and there are individual units that are smaller in scale. So you have got family-like sizes of units but you have got economies of scale; you can make use of getting the best of the practitioners in to provide the service at the one time. And you actually have then the opportunity for the step-down going through the particular facility.

**Ms PATTEN** — Within the same facility, yes.

**Mr F. DIXON** — So the scale is ideal from the point of view of it can be not too big for the individual units that the young people are in and big enough to get some good value out of the people they are supporting.

**Magistrate BOWLES** — So it was six beds in the secure facilities, plus two emergency beds, and then it was seven beds in the other four units on-site, and that is how you get to the 36 beds.

**Ms PATTEN** — And that enables you that step-down unit within the facility.

**Magistrate BOWLES** — On-site, and then to transition into the community.

**The CHAIR** — Jennifer, Frank, thanks.

**Magistrate BOWLES** — Can you let the Honourable Mr Thompson know that we did work out — what was it? — 200, and I had forgotten that.

**Mr F. DIXON** — Yes.

**Mr GEPP** — He is still on it. Yes, we will let him know.

**Magistrate BOWLES** — All right; thank you very much. Thanks again for the opportunity to present.

**Mr F. DIXON** — Thanks very much.

**Witnesses withdrew.**